

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 15, "General License Regulations," Iowa Administrative Code.

The proposed amendments redefine severe mental disability and severe physical disability; establish a means to verify low-income persons; substitute a free lifetime fishing license with a free annual fishing license; clarify the procedure for administering a free fishing or hunting license; permit enforcement capability in revoking licenses issued in violation of this rule; and provide a mechanism through which the Department may deny, suspend or revoke licenses of persons who owe the state of Iowa money pursuant to Iowa Code chapter 272D.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 27, 2009. Such written materials should be directed to Martin Konrad, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794; or E-mail Martin.Konrad@dnr.iowa.gov. Persons who wish to convey their views orally should contact the Fisheries Bureau at (515)281-6976 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on October 27, 2009, at 1 p.m. in the Fourth Floor East Conference Room, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa. At the public hearing, persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who attend the public hearing and have special needs, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code chapters 272D, 321G, 456A, 462A, 481A, 481B, 482, 483A, 484A, and 484B.

The following amendments are proposed.

ITEM 1. Amend rule 571—15.4(483A) as follows:

571—15.4(483A) Administration fee. An administration fee of \$1.50 per privilege purchased shall be collected from the purchaser at the time of purchase, except upon the issuance of free landowner deer and turkey hunting licenses, free annual hunting and fishing licenses, free ~~lifetime~~ annual fishing licenses, free group home fishing licenses, and boat registrations, renewals, transfers, and duplicates. An administrative fee of \$3.65 will be collected from the purchaser at the time of boat registration, renewal, transfer, and duplicate purchases.

ITEM 2. Amend subrule 15.23(3) as follows:

15.23(3) Procedure. Each person shall apply to the department of natural resources for a license as follows:

a. Application shall be made on a form provided by the department and shall include the name, address, height, weight, color of eyes and hair, date of birth, and gender of the applicant. In addition, applicants shall include a copy of an official document such as a birth certificate if claiming age status, or a copy of an award letter from the Social Security Administration or private pension plan if claiming permanent disabled status. ~~The applicant shall indicate on the application which low-income assistance program the applicant is receiving.~~ The application shall include an authorization allowing

the department of human services to verify ~~that the applicant is a recipient of the low-income assistance program checked on the application~~ applicant's household income if proof of income is provided through the department of human services.

b. The free annual hunting and fishing combination license will be issued by the department upon receipt of a properly completed application verification of program eligibility. The license issued under this rule will be valid until January 10 of the subsequent year. Proof of eligibility must be submitted each year in order to obtain a free license.

c. A person whose income falls below the federal poverty guidelines, ~~but is not a recipient of a state assistance program~~, may apply for this license by providing either of the following:

(1) ~~A statement listing income from all sources (i.e., social security, retirement income, wages, dividends and interest, cash gifts, rents and royalties, and other cash income).~~ A current Notice of Decision letter. For purposes of this rule, a "current Notice of Decision letter" shall mean a letter from the department of human services dated in the month the application is received or dated in the five months immediately preceding the month the application is received that describes the applicant's monthly or annual household income.

(2) ~~A copy of any available document that verifies income (i.e., income tax return, bank statement, social security statement, or other document the applicant considers supportive of income status).~~ If a person does not have a "Notice of Decision" letter as described in subparagraph (1), a document shall be provided that states that the applicant's annual income does not exceed the federal poverty limit for the current year and lists income from all sources, including but not limited to any wages or compensation, social security, retirement income, dividends and interest, cash gifts, rents and royalties, or other cash income. In addition, the applicant shall provide documentation of such income by submitting a copy of the applicant's most recently filed state or federal income tax return to the department. In the event an applicant does not have a tax return that was filed within the last year because the applicant's income level does not require the filing of a tax return, the applicant shall so notify the department, shall provide to the department bank statements, social security statements or other relevant income documentation identified by the department, and shall meet with the department to verify income eligibility under this rule.

(3) ~~A signed statement by the applicant that the applicant's annual cash income does not exceed the federal poverty limit for the current year.~~

Federal poverty guidelines are published in February of each year and will be the income standard for applicants from that time until the new limits guidelines are available in the subsequent year. The income limit guidelines will be shown on the application and will be available upon request from the department.

ITEM 3. Adopt the following new subrule 15.23(4):

15.23(4) Revocation. Any license issued pursuant to rule 571—15.23(483A) may be revoked, in whole or in part, by written notice, if the director determines that a license holder had provided false information to obtain a license under this chapter or has violated any provision of this chapter and that continuation of the license is not in the public interest. Such revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the revocation and the reasons for the action. Within 30 days following receipt of the notice of a revocation, the license holder may file a notice of appeal, requesting a contested case hearing pursuant to 561—Chapter 7. The notice of appeal shall specify the basis for requesting that the license be reinstated.

ITEM 4. Amend rule 571—15.24(483A) as follows:

571—15.24(483A) Free lifetime annual fishing license for persons who have severe physical or mental disabilities.

15.24(1) Purpose. Pursuant to Iowa Code subsection 483A.24(9), the department of natural resources will issue a free lifetime annual fishing license to Iowa residents 16 or more years of age who have severe mental or physical disabilities who meet the ~~definitions~~ definition of "severe mental disability" ~~and or~~ "severe physical disability" in 15.24(2).

15.24(2) Definitions. For the purposes of this rule, the following definitions apply:

“Severe mental disability” means a person who has severe, chronic conditions in all of the following areas which:

1. Are attributable to a mental impairment or combination of mental and physical impairments;
2. Are likely to continue indefinitely;
3. Result in substantial functional limitations in three or more of the following areas of major life activities: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and
4. Reflect the person’s need for a combination and sequence of services which are of lifelong or an extended duration and are individually planned and coordinated.

“Severe physical disability” means a disability that limits or impairs the person’s ability to walk under any of the following circumstances:

1. The person cannot walk 200 feet without stopping to rest.
2. The person cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device.
3. The person is restricted by lung disease to such an extent that the person’s forced expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than 60 mm/hg on room air at rest.
4. The person must use portable oxygen.
5. The person has a cardiac condition to the extent that the person’s functional limitations are classified in severity as Class 3 or Class 4 according to standards set by the American Heart Association. They include:

- Class 3—Persons with cardiac disease resulting in marked limitation of physical activity. The person is comfortable at rest, but less than ordinary activity causes fatigue, palpitation, dyspnea, or angina pain.

- Class 4—Persons with cardiac disease resulting in inability to carry on any physical activity without discomfort. Symptoms of heart failure or the anginal syndrome may be present even at rest. If any physical activity is undertaken, discomfort is increased.

6. The person is severely limited in the person’s ability to walk due to an arthritic, neurological, or orthopedic condition.

“Severe mental disability” means a person who has severe, chronic conditions in all of the following areas which:

1. Are attributable to a mental impairment or combination of mental and physical impairments;
2. Result in substantial functional limitations in three or more of the following areas of major life activities: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency;
3. Reflect the person’s need for a combination and sequence of services that are individually planned and coordinated; and
4. Requires the full-time assistance of another person to maintain a safe presence in the outdoors.

“Severe physical disability” means a disability that limits or impairs the person’s mobility or use of a hand or arm and that requires the full-time assistance of another person or that makes the person dependant on a wheelchair for the person’s normal life routine.

15.24(3) Procedure. Each person shall apply to the department of natural resources for a license as follows:

a. Application shall be made on a form provided by the department and shall include the name, home address, home telephone number, height, weight, eye and hair color, date of birth, and gender of the applicant and other information as required. The license issued under this rule will be issued by the department upon verification of program eligibility and will be valid until January 10 of the subsequent year. Proof of eligibility must be submitted each year in order to obtain the license.

b. The application shall be signed and certified by the applicant’s attending physician with an original signature and, based upon the criteria-listed definition of severe mental disability or severe physical disability as provided for in this rule, declare that the applicant has a severe mental or physical

disability. A medical statement from the applicant's attending physician specifying the applicant's type of disability shall be on 8½" x 11" stationery of the attending physician or on paper inscribed with the attending physician's letterhead. For purposes of this rule, the attending physician must be a currently practicing doctor of medicine, doctor of osteopathy, physician's assistant or nurse practitioner.

15.24(4) Revocation. Any license issued pursuant to 571—15.24(483A) may be revoked, in whole or in part, by written notice, if the director determines that a license holder had provided false information to obtain a license under this chapter or has violated any provision of this chapter and that continuation of the license is not in the public interest. Such revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the revocation and the reasons for the action. Within 30 days following receipt of the notice of a revocation, the license holder may file a notice of appeal, requesting a contested case hearing pursuant to 561—Chapter 7. The notice of appeal shall specify the basis for requesting that the license be reinstated.

ITEM 5. Reserve rules **571—15.44(483A)** to **571—15.50(483A)** in Division IV.

ITEM 6. Adopt the following **new** Division V heading in **571—Chapter 15**:

DIVISION V
LICENSE REVOCATION, SUSPENSION, AND MODIFICATION DUE TO
LIABILITIES OWED TO THE STATE

ITEM 7. Adopt the following **new** rules 571—15.51(272D) to 571—15.55(272D) in Division V:

571—15.51(272D) Purpose and use. This rule is intended to help collect liabilities of the state or a state agency. This rule shall apply to all licenses issued, renewed or otherwise authorized by the department.

571—15.52(272D) Definitions. For purposes of this chapter, the following definitions shall apply:

"Certificate of noncompliance" means a document provided by the unit certifying the named person has outstanding liability placed with the unit and has not entered into an approved payment plan to pay the liability.

"Department" means the department of natural resources.

"Liability" means a debt or obligation placed with the unit for collection that is greater than \$1,000. For purposes of this chapter, "liability" does not include child support payments collected pursuant to Iowa Code chapter 252J.

"License" means a license, certification, registration, permit, approval, renewal or other similar authorization issued to a person by the department which evidences the admission to, or granting of authority to engage in, a profession, occupation, business, industry, or recreation, including those authorizations set out in Iowa Code chapters 321G, 321I, 455B, 455C, 455D, 456A, 459, 459A, 461A, 462A, 481A, 481B, 481C, 482, 483A, 484B and 484C.

"Licensee" means a person to whom a license has been issued by the department or who is seeking the issuance of a license from the department.

"Notice of intent" means a notice sent to a licensee indicating the department's intent to suspend, revoke, or deny renewal or issuance of a license.

"Obligor" means a person with a liability placed with the unit.

"Unit" means the centralized collection unit of the department of revenue.

"Withdrawal of a certificate of noncompliance" means a document provided by the unit certifying that the certificate of noncompliance is withdrawn and that the department may proceed with issuance, reinstatement, or renewal of a person's license.

571—15.53(272D) Requirements of the department.

15.53(1) Records. The department shall collect and maintain records of its licensees that must include, at a minimum, the following:

- a. The licensee's first and last names.
- b. The licensee's current known address.
- c. The licensee's social security number.

The records shall be made available to the unit so that the unit may match to the records the names of persons with any liabilities placed with the unit for collections. The records must be submitted in an electronic format and updated on a quarterly basis.

15.53(2) *Certificate of noncompliance.* Upon receipt of a certificate of noncompliance from the unit, the department shall initiate its existing rules and procedures for the suspension, revocation, or denial of issuance or renewal of a person's license.

15.53(3) *Notice of intent.* The department shall provide a notice of intent to a person of its intent to suspend, revoke or deny issuance or renewal of a license in accordance with chapter 272D of the Iowa Code. The suspension, revocation, or denial shall be effective no sooner than 30 days following the issuance of the notice of intent to the person. The notice shall include all of the following:

a. That the department has received a certificate of noncompliance from the unit and intends to suspend, revoke or deny issuance or renewal of a person's license;

b. That the person must contact the unit to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance;

c. That the department will revoke, suspend or deny the person's license unless a withdrawal of a certificate of noncompliance is received from the unit within 30 days from the date of the notice;

d. That, in the event the department's rules and procedures conflict with the additional rules and procedures under this action, the rules and procedures of this action shall apply;

e. That mistakes of fact in the amount of the liability owed and the person's identity may not be contested to the department; and

f. That the person may request a district court hearing as outlined in rule 701—153.14(272D).

15.53(4) *Withdrawal.* Upon receipt of a withdrawal of a certificate of noncompliance from the unit, the department shall immediately reinstate, renew, or issue a license if the person is otherwise in compliance with the department's requirements.

571—15.54(272D) No administrative appeal of the department's action. Pursuant to Iowa Code section 272D.8, a person does not have a right to a hearing before the department to contest the department's action under this rule but may request a court hearing pursuant to rule 571—15.55(272D).

571—15.55(272D) District court hearing. A person may seek review of the actions listed in rule 701—153.14(272D) and request a hearing before the district court by filing an application with the district court in the county in which the majority of the liability was incurred. The person must send a copy of the application to the unit by regular mail. The application must be filed no later than 30 days after the department issues its notice of intent.

15.55(1) *Scheduling.* The clerk of the district court shall schedule a hearing and mail a copy of the scheduling order to the person, the unit, and the department.

15.55(2) *Certification.* The unit shall certify a copy of its written decision and certificate of noncompliance, indicating the date of issuance, and the department shall certify a copy of the notice issued pursuant to subrule 15.53(3) to the court prior to the hearing.

15.55(3) *Stay.* Upon receipt from the clerk of court of a copy of a scheduling order and prior to the hearing, the department shall stay any action contemplated on the person's license pursuant to the notice of intent.

15.55(4) *Hearing.* The hearing on the person's application shall be scheduled and held within 30 days of the application being filed. However, if the person fails to appear at the scheduled hearing, the stay shall be lifted and the department shall continue its procedures pursuant to the notice of intent.

15.55(5) *Scope of review.* The district court's review shall be limited to demonstration of the amount of the liability owed or the identity of the person.

15.55(6) *Findings.* If the court finds the unit was in error either in issuing a certificate of noncompliance or in its failure to issue a withdrawal of a certificate of noncompliance, the unit shall issue a withdrawal of a certificate of noncompliance to the department. If the court finds the unit was justified in issuing a certificate of noncompliance or in not issuing a withdrawal of a certificate of

noncompliance, a stay imposed under subrule 15.55(3) shall be lifted and the department shall proceed with the action as outlined in its notice of intent.

ITEM 8. Amend **571—Chapter 15**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 272D, 321G, 456A, 462A, 481A, 481B, 482, 483A, 484A, and 484B.